

SEP 10 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

**JUDICIAL COUNCIL
OF THE NINTH CIRCUIT**

**IN RE COMPLAINT OF
JUDICIAL MISCONDUCT**

No. 11-90168

ORDER

KOZINSKI, Chief Judge:

A pro se complainant alleges that a district judge abused his discretion in her civil cases by, inter alia, denying her the opportunity for oral argument and failing to grant her in forma pauperis status. These charges relate directly to the merits of the rulings and must therefore be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982); Judicial-Conduct Rule 11(c)(1)(B).

Complainant also alleges that the judge favored a particular defendant in her civil cases because he dismissed four of the cases involving that defendant. Complainant also submits the affidavits of three other people involved in a separate but related matter who believe that the judge favored that defendant during a hearing. But the vague impressions of interested parties are not proof of bias. The hearing transcript that formed the basis of those impressions has been reviewed and discloses no bias. Adverse rulings aren't proof of bias, and complainant hasn't

offered any other evidence of misconduct. This charge must therefore be dismissed as totally unfounded. See 28 U.S.C. § 352(b)(1)(A)(iii); In re Complaint of Judicial Misconduct, 583 F.3d 598, 598 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges the judge engaged in ex parte communications with opposing counsel in her foreclosure case. The only proof she offers is the coincidence that the judge granted her opponents' motion to dismiss on the same day she reached a tentative settlement with opposing counsel. Because there is no evidence of any ex parte communications, this charge must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(iii); Judicial-Conduct Rule 11(c)(1)(D).

Complainant further alleges that the judge should recuse himself from presiding over one of her civil cases because she intends to call him as a witness in that case. In general, allegations that a judge erred in failing to recuse are merits-related and must be dismissed. See 28 U.S.C. § 352(b)(1)(A)(ii); In re Complaint of Judicial Misconduct, 579 F.3d 1062, 1064 (9th Cir. Jud. Council 2009); Judicial-Conduct Rule 11(c)(1)(B); Implementation of the Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146 (2006). An allegation that a judge presided in a case knowing that he was subject to a conflict of interest may present a viable claim of judicial misconduct. See Implementation of the

Judicial Conduct and Disability Act of 1980: A Report to the Chief Justice 146.

But to state such a claim, a complainant must provide convincing proof that the judge was aware of a conflict or was acting with a corrupt motive. Here, complainant hasn't even shown that a conflict exists. When the complaint was filed, complainant stated it was "highly likely" that she would call the judge as a witness but she hadn't yet done so. A judge's failure to recuse himself from complainant's case simply because a conflict might arise isn't misconduct.

Holding that it is would let litigants use the judicial misconduct process to veto judges they don't like simply by threatening to call the judges as witnesses.

Because complainant doesn't allege misconduct, this charge must be dismissed.

See 28 U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A); see also In re Complaint of Judicial Misconduct, 527 F.3d 792, 795 (9th Cir. Jud. Council 2008).

Finally, complainant claims that she was deprived of due process because the judge was assigned to eight of her cases and the assignment was not random. The dockets show that the judge has been assigned to seven of complainant's ten cases filed in his district. The mere fact that the same judge presided over multiple cases involving complainant is not proof of misconduct, see In re Complaint of Judicial Misconduct, 650 F.3d 1370 (9th Cir. Jud. Council 2011), especially in light of the small number of active judges in the division where the cases were

filed. Furthermore, many of complainant's cases involved the same allegedly fraudulent "homeowner association . . . scheme." The district has a long-standing practice of alerting a judge when a case is filed that is related to one already on his docket, in order to conserve judicial resources. Under this circuit's precedent, an individual "has no right to any particular procedure for the selection of the judge" and is only "entitled to have that decision made in a manner free from bias or the desire to influence the outcome of the proceedings." Cruz v. Abbate, 812 F.2d 571, 574 (9th Cir. 1987). Because complainant offers no evidence of misconduct to support her claim, this charge must also be dismissed. See In re Complaint of Judicial Misconduct, 632 F.3d 1287, 1288 (9th Cir. Jud. Council 2011).

DISMISSED.